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From Mask Mandates To Bans: Some Jurisdictions In U.S. Are Doing A 180

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Remember the mask mandates from several years ago? Now lawmakers in several of the same jurisdictions that imposed required mask-wearing in many public places during the Covid-19 pandemic are considering whether to ban face coverings in certain settings. Here, context matters, as the reasons for considering a ban have nothing to do with the ones used to support mandates. But implications of mask prohibitions could impact public health and people's freedom of choice.

Advocates for bans say face coverings make it impossible for law enforcement to identify people who break the law. The movement to ban masks began in North Carolina. There, the State Senate voted along party lines in May in favor of a proposal to prohibit wearing masks in public. The bill repealed an exception to old anti-mask laws that was enacted during the early phase of the Covid-19 pandemic, allowing people to wear masks in public for "health and safety reasons." Counties throughout North Carolina went further in 2020 and early 2021, requiring masks in many public settings before lifting such orders in May of 2021.

According to *The Hill*, Republican supporters of the ban said it would help law enforcement "crack down on pro-Palestine protesters who wear masks." They accuse demonstrators of "abusing Covid-19 pandemic-era practices to hide their identities."

Actions to forbid masks are also being considered in other jurisdictions that

Guardian reports that Governor Kathy Hochul of New York said last month she is considering banning face masks throughout New York City's public transit system over concerns that the coverings obscure the identities of people committing anti-Semitic acts. In Chicago, Alderman Raymond Lopez introduced an ordinance to for "enhanced penalties for concealing or attempting to conceal identity," namely by people who wear "full face masks while committing crimes." Los Angeles Mayor Karen Bass says she is discussing a mask ban for protests with the City Attorney.

North Carolina's anti-mask policy is now law. After the Governor vetoed a revised version of the anti-mask bill, the legislation was ratified late last month after Republican lawmakers successfully overrode the governor's veto.

The reworked version of the bill made it clear that increases in punishments would be imposed on people wearing masks "while committing a crime," not merely for doing so for a health reason. But Democrats in North Carolina aren't convinced. They remain concerned that police could interpret the law as justification for searching or apprehending people who are simply wearing a mask.

Opponents assert these bans pose a danger to public health. When the North Carolina Senate first introduced a proposal to restrict usage of masks in public, experts raised specific concerns about the bill's impact on the immunocompromised or those who may want to continue to wear masks during cancer treatments. Jerome Adams, former surgeon general in the Trump

disturbing to think immunocompromised and cancer patients could be deemed criminals for following medical advice aimed at safeguarding their health."

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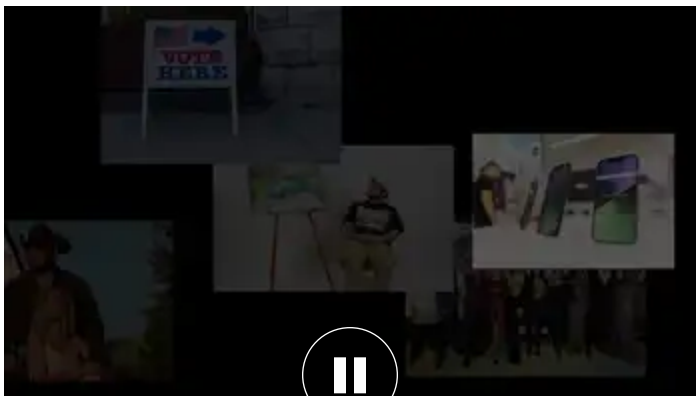
There are legitimate health reasons for wearing medical masks. These include asthma and exposure to wildfire, smoke and exhaust. And, individuals may want to protect themselves, their families and others from pathogens like Covid-19 and influenza.

The Centers for Disease Control and Prevention states that wearing a high quality medical mask (a KN-95 or N95, for example) can help lower the risk of respiratory virus transmission. Moreover, a comprehensive study released in May suggests that if properly and consistently worn masks are effective at reducing community transmission of respiratory pathogens.



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With Covid-19 spiking again this summer, this accentuates the contentious nature of the proposed bans.

Governor Hochul has said that any future ban in New York would still allow people to use masks for medical reasons, similar to an exemption added to North Carolina's law before it passed.

But there's ambiguity in determining exceptions. Consider proposed model legislation, for instance, which the Manhattan Institute for Policy Research suggested states and municipalities adopt to ban face coverings worn by "participants in demonstrations" that are intended to "conceal or intimidate." Like North Carolina and New York, the template provides for an exclusion for masking for health reasons. Yet, it's unclear whether the proposed ban applies to any demonstrator wearing a mask. Presumably, demonstrating itself isn't a criminal act, with or without a mask. But the model isn't unequivocal, only saying that "someone who wears a mask for health reasons probably should not be congregating in large groups of people—and members of large groups will not all have respiratory illnesses at the same time."

Most importantly, some health experts and medically-vulnerable people fear that protections for medical masking will only exist on paper and, in reality, the bans would create barriers.

At the height of the Covid-19 pandemic, wearing a mask was mandatory in public places in many jurisdictions as well as federal buildings and property. This provoked an outcry from people on the grounds of freedom of choice.

In 2021, judges overturned a number of mask mandates at both the federal and state levels and did so on constitutional grounds.

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By the same token, though in a role swap, it could be argued that by banning masks people won't be able to exercise their freedom of choice to wear masks, regardless of the reason. A constitutional law debate could ensue once the bans go into effect.

In the case of the North Carolina law, the American Civil Liberties Union argues

while protesting the conflict between Israel and Hamas, which in the ACLU's view amounts to "selective prosecution of a disfavored movement."

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In a stark reversal, some of the same U.S. jurisdictions that imposed mask mandates at the height of the Covid-19 pandemic are now proposing and even implementing bans on face coverings.

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